



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### PIEDMONT REGIONAL OFFICE

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Regional Director

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO CHAPARRAL (VIRGINIA) INC. Registration Number 51264**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Chaparral (Virginia) Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable Permit and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.
2. "Chaparral" means Chaparral (Virginia) Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries, as appropriate. Chaparral is a "person" within the meaning of Va. Code § 10.1-1300.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the Chaparral facility, located at 25801 Hofheimer Way, Petersburg, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a Consent Order or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means the Prevention of Significant Deterioration (PSD) Permit, to modify and operate a steel recycling facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Chaparral on December 17, 2010.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Chaparral owns and operates the Facility in Petersburg, Virginia. The Facility recycles steel by taking steel scrap, shreds it, melts the scrap in an electric arc furnace and casts the molten steel into useable end products such as construction beams. The Facility is subject to the Permit which authorizes the operation of a steel recycling facility.
2. On June 29, 2011, the Department staff conducted a PCE at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the

Regulations. Based on the evaluation and follow-up information, Department staff made the following observation:

On May 2, 2011 and May 23, 2011, DEQ received incomplete documentation for the First Quarter Excess Emission Report (EER) for 2011, which was due on May 1, 2011. Chaparral failed to submit Flow Monitor information, Downtime Repair Summary and Corrected Downtime Calculations.

3. Condition 48 of the Permit states that unless the frequency of such reports has been reduced by the Director, Piedmont Regional Office, the permittee shall submit excess emissions reports for each CERMS to the Director, Piedmont Regional Office, within 30 days after the end of each calendar quarter. Excess nitrogen oxide (NO<sub>x</sub>) and carbon monoxide (CO) emissions are defined as any 24-hour or 30-day rolling average emission rate, computed in accordance with 40 CFR 60.13(h), that exceeds the applicable emission limit in Condition 13, as modified by Conditions 16 or 32. Each quarterly excess emission report shall contain, at a minimum, the dates included in the calendar quarter and the following (additional details of the quarterly reports are to be arranged with the Director, Piedmont Regional Office):
  - a. The magnitude of excess emissions, any conversion factors used in the calculation of excess emissions, and the date and time of commencement and completion of each period of excess emissions;
  - b. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the process, the nature and cause of the malfunction (if known), and the corrective action taken or preventative measures adopted;
  - c. The date and time identifying each period during which the CERMS was inoperative (except for zero and span checks) and the nature of the system repairs or adjustments; and
  - d. When no excess emissions have occurred or the CERMS have not been inoperative, repaired or adjusted, such information shall be stated in that report.
4. 9 VAC 5-50-50 states that any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications and reports, maintain records or report performance test or monitoring results in an acceptable manner and form to the board as required by the Permit.
5. On September 28, 2011, Department staff conducted a PCE at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:
  - a. On May 18, 2011, DEQ received a testing protocol from Chaparral, with a proposed schedule to conduct the performance tests from June 21-24, 2011. On June 20, 2011, Chaparral submitted a request to DEQ to extend the date to

conduct the performance testing from the common positive baghouse (CD1), but did not provide an alternate test date at that time.

- b. Upon review of the circumstances for the request by Chaparral to delay conducting the performance tests, DEQ denied the request for delay, based on the fact that Chaparral had 180 days, prior to June 15, 2011, to have made internal and external arrangements to perform the test in the required time frame.
6. Condition 29 of the Permit requires that performance testing be conducted for sulfur dioxide (SO<sub>2</sub>), volatile organic compounds (VOC), and lead from the CD1 to determine compliance with the emissions limits contained in Condition 14 of the Permit. Performance testing was also required for mercury from the CD1 for emission inventory purposes. The performance tests were to be conducted within 180 days after the date of the Permit, which was prior to June 15, 2011.
7. 9 VAC 5-80-1675 requires that compliance with standards of performance shall be determined in accordance with the provision of 9 VAC 5-50-20 and shall be verified by performance tests in accordance with the provisions of 9 VAC 5-50-30. Testing shall be conducted within 60 days by the owner after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests, unless DEQ has granted a testing requirement waiver.
8. On October 3, 2011, based on the evaluation and follow-up information, the DEQ issued Notice of Violation, Number 08-11-PRO-401, for the violations described in paragraphs C(2) through C(7), above.
9. On November 8, 2011, Department staff met with representatives of Chaparral to discuss the violations.
10. Based on the results of the June 29, 2011 and September 28, 2011 evaluations, the November 8, 2011 meeting, and the documentation submitted on May 2, 2011, May 23, 2011 and June 20, 2011, the Board concludes that Chaparral violated Conditions 29 and 48 of the Permit, and 9 VAC 5-80-1675 and 9 VAC 5-50-50, as described in paragraphs C(3), C(4), C(6) and C(7), above.
11. Chaparral has made the corrective actions that demonstrate the violations described in paragraphs C(3), C(4), C(6) and C(7), above have been addressed.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1309 and -1316, the Board orders Chaparral, and Chaparral agrees to:

1. Pay a civil charge of **\$11,057** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Chaparral shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Chaparral, for good cause shown by Chaparral, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.* after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Chaparral admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact, and conclusions of law in this Order.
4. Chaparral consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Chaparral declares it has received fair and due process under the Administrative Process Act and Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend or enforce this Order.

6. Failure by Chaparral to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Chaparral shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Chaparral shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Chaparral shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Chaparral. Nevertheless, Chaparral agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Chaparral has completed all of the requirements of the Order; or
- b. Chaparral petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Chaparral.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Chaparral from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Chaparral and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Chaparral certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Chaparral to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Chaparral.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Chaparral voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8<sup>th</sup> day of MAY, 2012.

  
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Michael P. Murphy, Regional Director  
Department of Environmental Quality

Chaparral (Virginia) Inc., voluntarily agrees to the issuance of this Order.

Date: 5-8-12 By: [Signature], V.P. & General Manager  
(Person) (Title)  
Chaparral (Virginia) Inc.

State of Virginia

City/County of Dumfries

The foregoing document was signed and acknowledged before me this 8th day of  
May, 2012, by Greg Bott, who is  
(name)  
VP & General Manager of Chaparral (Virginia) Inc., on behalf of the  
corporation.

[Signature]  
Notary Public  
237662  
Registration No.

My commission expires: Sep 30, 2012

Notary seal:

